

Volume 27, Number 12

Pages 959-1084

June 17, 2002



**MATT BLUNT**

**SECRETARY OF STATE**

MISSOURI  
REGISTER

The *Missouri Register* is an official publication of the state of Missouri, under the authority granted to the secretary of state by sections 536.015 and 536.033, RSMo 2000. Reproduction of rules is allowed; however, no reproduction shall bear the name *Missouri Register* or "official" without the express permission of the secretary of state.

The *Missouri Register* is published semi-monthly by

**SECRETARY OF STATE**

**MAT T BLUNT**

Administrative Rules Division

James C. Kirkpatrick State Information Center  
600 W. Main  
Jefferson City, MO 65101  
(573) 751-4015

DIRECTOR

LYNNE C. ANGLE

ADMINISTRATIVE STAFF

SANDY SANDERS

PEGGY TALKEN

EDITORS

BARBARA MCDUGAL

JAMES MCCLURE

ASSOCIATE EDITORS

CURTIS W. TREAT

SALLY L. REID

TIFFANY M. DAVIS

PUBLISHING STAFF

WILBUR HIGHBARGER

CARLA HERTZING

JOHN C. STEGMANN

ISSN 0149-2942, USPS 320-630; periodical postage paid at Jefferson City, MO  
Subscription fee: \$56.00 per year

POSTMASTER: Send change of address notices and undelivered copies to:

**MISSOURI REGISTER**  
Office of the Secretary of State  
Administrative Rules Division  
PO Box 1767  
Jefferson City, MO 65102

The *Missouri Register* and *Code of State Regulations* (CSR) are now available on the Internet. The Register address is <http://www.sos.state.mo.us/adrules/moreg/moreg.asp> and the CSR is <http://www.sos.state.mo.us/adrules/csr/csr.asp>. These web sites contain rulemakings and regulations as they appear in the Registers and CSR. These web sites do not contain the official copies of the Registers and CSR. The official copies remain the paper copies published by the Office of the Secretary of State pursuant to sections 536.015 and 536.031, RSMo 2000. While every attempt has been made to ensure accuracy and reliability, the Registers and CSR are presented, to the greatest extent practicable as they appear in the official publications. The Administrative Rules Division may be contacted by e-mail at [rules@sosmail.state.mo.us](mailto:rules@sosmail.state.mo.us).

The secretary of state's office makes every effort to provide program accessibility to all citizens without regard to disability. If you desire this publication in alternate form because of a disability, please contact the Division of Administrative Rules, PO Box 1767, Jefferson City, MO 65102, (573) 751-4015. Hearing impaired citizens should contact the director through Missouri relay, (800) 735-2966.



## IN THIS ISSUE:

### EMERGENCY RULES

**Department of Social Services**  
 Division of Medical Services . . . . .963  
**Department of Health and Senior Services**  
 Division of Environmental Health and  
 Communicable Disease Prevention . . . . .964

### PROPOSED RULES

**Department of Agriculture**  
 Animal Health . . . . .966  
**Department of Conservation**  
 Conservation Commission . . . . .971  
**Department of Transportation**  
 Missouri Highways and Transportation Commission . . . . .1002  
**Department of Natural Resources**  
 Air Conservation Commission . . . . .1010  
**Department of Health and Senior Services**  
 Division of Environmental Health and  
 Communicable Disease Prevention . . . . .1032  
**Department of Insurance**  
 Property and Casualty . . . . .1032

### ORDERS OF RULEMAKING

**Department of Agriculture**  
 Market Development . . . . .1044  
 State Milk Board . . . . .1044  
**Department of Conservation**  
 Conservation Commission . . . . .1044  
**Department of Labor and Industrial Relations**  
 Labor and Industrial Relations Commission . . . . .1053  
**Department of Social Services**  
 Division of Family Services . . . . .1053

**Elected Officials**  
 Secretary of State . . . . .1054  
**Retirement Systems**  
 The Public School Retirement System of Missouri . . . . .1061

### IN ADDITIONS

**Department of Conservation**  
 Conservation Commission . . . . .1062  
**Elected Officials**  
 Secretary of State . . . . .1062  
**Department of Health and Senior Services**  
 Missouri Health Facilities Review Committee . . . . .1062

### DISSOLUTIONS . . . . .1063

### BID OPENINGS

**Office of Administration**  
 Division of Purchasing . . . . .1064

**RULE CHANGES SINCE UPDATE . . . . .1065**  
**EMERGENCY RULES IN EFFECT . . . . .1073**  
**REGISTER INDEX . . . . .1075**

Register Filing Deadlines	Register Publication	Code Publication	Code Effective
March 1, 2002 March 15, 2002	April 1, 2002 April 15, 2002	April 30, 2002 April 30, 2002	May 30, 2002 May 30, 2002
April 1, 2002 April 15, 2002	May 1, 2002 May 15, 2002	May 31, 2002 May 31, 2002	June 30, 2002 June 30, 2002
May 1, 2002 May 15, 2002	June 3, 2002 June 17, 2002	June 30, 2002 June 30, 2002	July 30, 2002 July 30, 2002
June 3, 2002 June 17, 2002	July 1, 2002 July 15, 2002	July 31, 2002 July 31, 2002	August 30, 2002 August 30, 2002
July 1, 2002 July 15, 2002	August 1, 2002 August 15, 2002	August 31, 2002 August 31, 2002	September 30, 2002 September 30, 2002
August 1, 2002 August 15, 2002	September 3, 2002 September 16, 2002	September 30, 2002 September 30, 2002	October 30, 2002 October 30, 2002
August 30, 2002 September 16, 2002	October 1, 2002 October 15, 2002	October 31, 2002 October 31, 2002	November 30, 2002 November 30, 2002
October 1, 2002 October 15, 2002	November 1, 2002 November 15, 2002	November 30, 2002 November 30, 2002	December 30, 2002 December 30, 2002
November 1, 2002 November 15, 2002	December 2, 2002 December 16, 2002	December 31, 2002 December 31, 2002	January 30, 2003 January 30, 2003

Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the web site at <http://www.sos.state.mo.us/adrules/pubsched.asp>

# Missouri Depository Libraries

The *Missouri Register* and the *Code of State Regulations*, as required by the Missouri Depository Documents Law (section 181.100, RSMo 2000), are available in the listed depository libraries, as selected by the Missouri State Library:

Jefferson County Library PO Box 1486, 3021 High Ridge High Ridge, MO 63049-1486 (314) 677-8689	Learning Resources Center Mineral Area College PO Box 1000 Park Hills, MO 63601-1000 (573) 431-4593	Missouri Western State College Hearnes Learning Resources Ctr. 4525 Downs Drive St. Joseph, MO 64507-2294 (816) 271-5802	Library University of Missouri-Rolla 1870 Miner Circle Rolla, MO 65409-0060 (573) 341-4007
Jefferson College Library 1000 Viking Drive Hillsboro, MO 63050-2441 (314) 789-3951	Cape Girardeau Public Library 711 N. Clark Cape Girardeau, MO 63701-4400 (573) 334-5279	Library North Central Missouri College PO Box 111, 1301 Main Street Trenton, MO 64683-0107 (660) 359-3948	Kinderhook Regional Library 135 Harwood Ave. Lebanon, MO 65536-3017 (417) 532-2148
St. Louis Public Library 1301 Olive St. St. Louis, MO 63103-2389 (314) 539-0376	Kent Library Southeast Missouri State University One University Plaza Cape Girardeau, MO 63701-4799 (573) 651-2757	Missouri Southern State College Spiva Library 3950 East Newman Road Joplin, MO 64801-1595 (417) 625-9770	ESTEP Library Southwest Baptist University 1601 S. Springfield Street Bolivar, MO 65613-2597 (417) 326-5281
St. Louis University Law Library 3700 Lindell Blvd. St. Louis, MO 63108-3478 (314) 977-2756	Riverside Regional Library PO Box 389, 204 South Union St. Jackson, MO 63755-0389 (573) 243-8141	Missouri State Library 600 West Main, PO Box 387 Jefferson City, MO 65102-0387 (573) 751-3075	Barry-Lawrence Regional Library 213 6th St. Monett, MO 65708-2147 (417) 235-6646
Eden Theological Seminary/ Webster University Eden/Webster Library 475 East Lockwood Ave. St. Louis, MO 63119-3192 (314) 961-2660	Rutland Library Three Rivers Community College 2080 Three Rivers Blvd. Poplar Bluff, MO 63901-2393 (573) 840-9656	Missouri State Archives 600 West Main, PO Box 778 Jefferson City, MO 65102-0778 (573) 526-6711	Lyons Memorial Library College of the Ozarks General Delivery Point Lookout, MO 65726-9999 (417) 334-6411
Thomas Jefferson Library University of Missouri-St. Louis 8001 Natural Bridge Road St. Louis, MO 63121-4499 (314) 516-5084	Ward Edwards Library Central Missouri State University 142 Edwards Library Warrensburg, MO 64093-5020 (660) 543-4149	Elmer Ellis Library University of Missouri-Columbia 104 Ellis Library Columbia, MO 65211-5149 (573) 882-6733	West Plains Campus Library Southwest Missouri State University 123 N. Minnesota West Plains, MO 65775-3414 (417) 256-9865
Washington University Washington University Law Library Campus Box 1171, Mudd Bldg., One Brookings Dr. St. Louis, MO 63130-4899 (314) 935-6484	Kansas City Public Library 311 East 12th St. Kansas City, MO 64106-2454 (816) 701-3400	Library State Historical Society of Missouri 1020 Lowry St. Columbia, MO 65201-7298 (573) 882-7083	Springfield-Greene County Library PO Box 737, 397 E. Central Springfield, MO 65801-0760 (417) 869-4621
St. Louis County Library 1640 S. Lindbergh Blvd. St. Louis, MO 63131-3598 (314) 994-3300	Law Library University of Missouri-Kansas City 5100 Rockhill Road Kansas City, MO 64110-2499 (816) 235-2438	Daniel Boone Regional Library PO Box 1267, 100 West Broadway Columbia, MO 65205-1267 (573) 443-3161	Meyer Library Southwest Missouri State University PO Box 175, 901 S. National Springfield, MO 65804-0095 (417) 836-4533
Maryville University Library 13550 Conway Road St. Louis, MO 63141-7232 (314) 529-9494	University of Missouri-Kansas City Miller Nichols Library 5100 Rockhill Road Kansas City, MO 64110-2499 (816) 235-1281	School of Law University of Missouri-Columbia 224 Hulston Hall Columbia, MO 65211-0001 (573) 882-1125	
St. Charles City-County Library Middendorf-Kredell Branch 2750 Hwy K O'Fallon, MO 63366-7859 (314) 978-7997	B.D. Owens Library Northwest Missouri State University 800 University Drive Maryville, MO 64468-6001 (660) 562-1841	Central Methodist College Smiley Memorial Library 411 Central Methodist Square Fayette, MO 65248-1198 (660) 248-6292	
Truman State University Pickler Memorial Library 100 E. Normal Kirksville, MO 63501-4221 (660) 785-7416	River Bluffs Regional Library 927 Felix Street St. Joseph, MO 64501-2799 (816) 232-8151		

## HOW TO CITE RULES AND RSMo

**RULES**—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 26, *Missouri Register*, page 27. The approved short form of citation is 26 MoReg 27.

The rules are divided in the *Code of State Regulations* in this system—

Title	Code of State Regulations	Division	Chapter	Rule
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation, i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division in the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

**RSMo**—Cite material in the RSMo by date of legislative action. The note in parentheses gives the original and amended legislative history. The Office of the Revisor of Statutes recognizes that this practice gives users a concise legislative history.

**R**ules appearing under this heading are filed under the authority granted by section 536.025, RSMo 2000. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons and findings which support its conclusion that there is an immediate danger to the public health, safety or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

**R**ules filed as emergency rules may be effective not less than ten (10) days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

**A**ll emergency rules must state the period during which they are in effect, and in no case can they be in effect more than one hundred eighty (180) calendar days or thirty (30) legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

## Title 13—DEPARTMENT OF SOCIAL SERVICES Division 70—Division of Medical Services Chapter 20—Pharmacy Program

### EMERGENCY AMENDMENT

**13 CSR 70-20.200 Drug Prior Authorization Process.** The division is amending this rule by adding section (8).

*PURPOSE:* The purpose of this rule is to clarify the process by which existing drugs included in the Medical Assistance Program may be restricted.

*EMERGENCY STATEMENT:* Cost Containment through prior authorization of additional drugs was identified in the State Fiscal Year (SFY) 2002 budget in the amount of \$4.9 million annually. During SFY 2002, the division attempted to implement prior authorization of certain drugs to achieve the pharmacy cost containment's identified through that budgetary process. These attempts met with opposition due to differences in interpretation of 13 CSR 70-20.200(3). The division committed to withdraw the proposed rules and take steps to clarify the language. This amendment provides the clarification of the terms in controversy. Expansion of prior authorization of drugs in medical assistance programs has been recognized as a prudent cost containment measure across the country. The SFY 2002 revenue projection is expected to be about

\$750 million less than the original consensus revenue forecast. This forecast was arrived at in December 2000 and provides the basis for the SFY 2002 budget established by the legislature and signed by the Governor. For SFY 2003, the state is projecting general revenue will be \$56 million less than actual net collections in SFY 2001. This does not take into account the impact of inflation. Assuming this projection is accurate, the state will have less money to operate than two years ago while it must fund mandatory items such as Medicaid caseload growth. The state fiscal situation presents an emergency in that it is necessary to take steps to implement pharmacy cost containment measures in order to preserve the compelling governmental interest of reducing expenditures to meet revenues and balance the state budget. This must be accomplished in such a way as to clarify those issues in controversy so the cost containment measures can proceed without further hindrance. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri* and *United States Constitutions*. The Division of Medical Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed May 22, 2002, effective June 1, 2002 and expires November 27, 2002.

**(8) When implementing the provisions of section (3), Missouri-specific data shall include the consideration of use and cost data, pharmacoeconomic information and prudent utilization of state funds, and may include medical and clinical criteria.**

*AUTHORITY:* sections 208.153], RSMo Supp. 1991] and 208.201, RSMo [Supp. 1987] 2000. Original rule filed Feb. 3, 1992, effective Aug. 6, 1992. Emergency amendment filed May 22, 2002, effective June 1, 2002, expires Nov. 27, 2002.

## Title 13—DEPARTMENT OF SOCIAL SERVICES Division 70—Division of Medical Services Chapter 20—Pharmacy Program

### EMERGENCY RULE

**13 CSR 70-20.250 Prior Authorization of New Drug Entities or New Drug Dosage Form**

*PURPOSE:* The purpose of this rule is to outline the process by which new drugs or new drug dosage forms of existing drugs may be subject to prior authorization prior to payment by the Missouri Medical Assistance Program.

*EMERGENCY STATEMENT:* Expansion of prior authorization of drugs in medical assistance programs across the country has been recognized as a prudent cost containment measure. Missouri's economic status calls for emergency measures to contain cost wherever feasible. The State Fiscal Year (SFY) 2002 revenue projection is expected to be \$750 million less than the original consensus revenue forecast, which was established in December 2000. The Department of Social Services has been required to withhold funds appropriated in the SFY 2002 budget in response to the shortfall in projected revenues in August 2001, December 2001, and May 2002. These withholdings have totaled \$53.4 million in General Revenue funds and \$24.3 million in other state funds. For SFY 2003, the state is projecting general revenue will be \$56 million less than actual net collections in SFY 2001. This does not take into account the impact of inflation. Assuming this projection is accurate, the state will have less money to operate than two years ago while it must fund mandatory items such as Medicaid caseload growth. In the SFY 2003 budget, the Department of

*Social Services' appropriation indicates cost containment in pharmacy costs in the Medical Assistance Program of over \$100 million (state and federal funds), including \$35.5 million in savings through the prior authorization of new drugs. Achieving cost containment necessary through prior authorization requires an effective date for this rule in advance of that which can be obtained through the regular rulemaking process. Promulgation of this emergency rule is necessary to preserve the compelling governmental interest of maximizing pharmacy cost containment to reduce expenditures to match projected actual revenues in SFY 2002 and to achieve a balanced state budget for SFY 2003. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The division believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed May 22, 2002, effective June 1, 2002 and expires November 27, 2002.*

(1) New drug entities, and new drug product dosage forms of existing drug entities, that have been approved by the Food and Drug Administration and are available on the market, shall comply with prior authorization requirements imposed by the division, in compliance with federal law.

(2) Prior authorization restrictions shall continue on new drug entities and new drug product dosage forms of existing drugs until reviewed by the division and the division eliminates the restriction or makes a final determination to require restriction. The division shall consider known cost and use data, medical and clinical criteria, and prudent utilization of state funds in the review. Interested parties may present clinical data to the division.

(3) The review referenced in (2) shall occur within 30 business days after the division receives notice through pricing updates of the availability of the drug entity on the market. Upon completion of the review, the division shall make the drug available for use by all Medicaid recipients or refer the new drug or new drug dosage form to the Medicaid Drug Prior Authorization Committee (MDPAC) with a recommendation for continued prior authorization. Staff recommendations regarding continued prior authorization of a new drug or new drug dosage form shall be made in writing to the MDPAC. A copy shall be available to the public prior to the MDPAC meeting in which the continued prior authorization is to be discussed.

(4) The MDPAC shall consider any recommendations related to continued prior authorization of a new drug or new drug dosage form at the next scheduled MDPAC meeting. The division and the MDPAC may actively seek comments about the proposed restrictions. The MDPAC shall include a minimum of 15 minutes for interested parties to comment about such proposed restrictions.

(5) If the MDPAC finds that use and cost data, pharmacoeconomic information, along with medical and clinical implications of restriction, are documented and restriction is warranted, the MDPAC shall hold a public hearing regarding the continued restriction and make a recommendation to the division. Such recommendation shall be provided to the division, in writing, prior to the division making a final determination. The division shall provide notice of the final determination through the Department of Social Services, Division of Medical Services website at [www.dss.state.mo.us/dms](http://www.dss.state.mo.us/dms), provider bulletins, and updates to the provider manual.

(6) If, after the hearing referenced in (5) above, prior authorization of the new drug or new drug dosage form is required, the prior authorization requirement shall be reviewed at least once every twelve (12) months by the MDPAC.

*AUTHORITY: sections 208.153 and 208.201, RSMo 2000. Emergency rule filed May 22, 2002, effective June 1, 2002, expires Nov. 27, 2002.*

**Title 19—DEPARTMENT OF HEALTH  
AND SENIOR SERVICES  
Division 20—Division of Environmental Health and  
Communicable Disease Prevention  
Chapter 26—Sexually Transmitted Diseases**

**EMERGENCY AMENDMENT**

**19 CSR 20-26.050 Preventing Transmission of Human Immunodeficiency Virus (HIV) and Hepatitis B Virus (HBV) from Health Care Workers to Patients.** The division is deleting section (4).

*PURPOSE: This amendment is to remove the sunset clause on this rule in order to continue the established training requirements relating to the prevention of the transmission of the Human Immunodeficiency Virus, Hepatitis B Virus and other bloodborne pathogens from infected health care workers to patients.*

*EMERGENCY STATEMENT: In 1992, section 191.694, RSMo, was passed requiring that all health care professionals who perform invasive procedures shall receive training on infection control procedures relevant to HIV and related diseases. Currently there is a sunset clause which provides that this rule is due to expire on June 30, 2002. As this rule is necessary for the continued implementation and administration of section 191.694, RSMo, the Missouri Department of Health and Senior Services finds an immediate danger to the public health and welfare and a compelling governmental interest, which requires emergency action to remove this sunset clause. A proposed amendment, which covers the same material, is published in this issue of the Missouri Register. The scope of this rule is limited to the circumstances creating the emergency and complies with the protection extended in the Missouri and the United States Constitutions. The Commission believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency amendment was filed May 10, 2002, effective July 1, 2002, and expires December 28, 2002.*

*[(4) This rule expires on June 30, 2002.]*

*AUTHORITY: section 191.694.4, RSMo 2000. Original rule filed April 17, 1995, effective Nov. 30, 1995. Emergency amendment filed May 10, 2002, effective July 1, 2002, expires Dec. 28, 2002. A proposed rule covering this same material is published in this issue of the Missouri Register.*

**Title 19—DEPARTMENT OF HEALTH  
AND SENIOR SERVICES  
Division 20—Division of Environmental Health and  
Communicable Disease Prevention  
Chapter 26—Sexually Transmitted Diseases**

**EMERGENCY AMENDMENT**

**19 CSR 20-26.060 Voluntary Evaluation for the Human Immunodeficiency Virus (HIV)- and Hepatitis B Virus (HBV)-Infected Health Care Professionals Who Perform Invasive Procedures.** The division is deleting section (5).

*PURPOSE: This amendment is to remove the sunset clause in this rule in order to continue the established procedures for the voluntary evaluation of the Human Immunodeficiency Virus and*

*Hepatitis B Virus for infected health care professionals who perform invasive procedures in order to determine whether practice restrictions or limitations should be applied.*

*EMERGENCY STATEMENT: In 1992, section 191.700, RSMo was passed requiring the Department of Health to set an expert review panel to evaluate the Human Immunodeficiency Virus (HIV) and the Hepatitis B Virus infected health care professionals who perform invasive procedures. This evaluation is voluntary on the part of the infected health care professional. Currently, there is a sunset clause which provides that this rule is due to expire on June 30, 2002. As this rule is necessary for the continued implementation and administration of section 191.700, RSMo, the Missouri Department of Health and Senior Services finds an immediate danger to the public health and welfare and a compelling governmental interest, which requires emergency action to remove this sunset clause. A proposed amendment, which covers the same material, is published in this issue of the **Missouri Register**. The scope of this rule is limited to the circumstances creating the emergency and complies with the protection extended in the **Missouri** and the **United States Constitutions**. The Commission believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency amendment was filed May 10, 2002, effective July 1, 2002, expires December 28, 2002.*

*[(5) This rule expires on June 30, 2002.]*

*AUTHORITY: section 191.700.2, RSMo 2000. Original rule filed April 17, 1995, effective Nov. 30, 1995. Emergency amendment filed May 10, 2002, effective July 1, 2002, expires Dec. 28, 2002. A proposed rule covering this same material is published in this issue of the **Missouri Register**.*